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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,398	08/28/2003	Elvin R. Lukenbach	JBP-5014	6758

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EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/650,398

Applicant(s)

LUKENBACH ET AL.

Examiner

Brian P. Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/31/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 31, 2005 has been entered.
2. This Office action is in response to Applicant's amendment filed May 31, 2005. Applicant has amended claim 1. Claims 5-7 have been canceled. Currently, claims 1-4, 9 and 11-13 remain pending in the application.
3. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office actions, Paper Nos. 20041027 and 20050226.
4. The rejection of claims 1-4, 9 and 11-13 under 35 U.S.C. 103(a) as being unpatentable over Shana'a et al, U.S. Patent No. 6,737,394, is maintained for the reasons of record.

5. The rejection of claims 1-4, 9 and 11-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-4, 9-12 and 17-18 of copending Application No. 10/650,226 is maintained for the reasons of record.

6. The rejection of claims 1-7, 9 and 11-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 and 12-14 of copending Application No. 10/650,495 is maintained for the reasons of record.

### ***Response to Arguments***

7. Applicant's arguments filed May 31, 2005 have been fully considered but they are not persuasive.

Applicant argues that Shana'a et al, U.S. Patent No. 6,737,394, fails to teach or suggest the unexpected results of reduced skin irritancy discovered by applicant with a composition containing an anionic surfactant, hydrophobically-modified polymer, and less than 0.5% by weight of an amphoteric surfactant, as recited in the instant claims. However, the examiner asserts that applicant's showing of unexpected results is not commensurate in scope with the instant claims. Specifically, applicant's Examples 20 and 22 show that a composition containing a hydrophobically-modified polymer and more than 0.5% by weight of an amphoteric surfactant provide a composition that is more mild to the skin than a composition containing a hydrophobically-modified polymer and 0% by weight of an amphoteric surfactant. Thus, applicant's showing is contrary to the presently claimed invention, since the addition of more than 0.5% by weight of an

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amphoteric surfactant helps in reducing the skin irritancy of the personal cleansing composition. Therefore, the examiner maintains that the instant claims are rendered obvious in view of Shana'a et al, U.S. Patent No. 6,737,394.

It is noted by the examiner that the provisional rejection of claims 1-7, 9 and 11-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-4 and 9-12 of copending Application No. 10/650,226 and claims 1-6 and 12-14 of copending Application No. 10/650,495 is not the only remaining rejection in the instant application, and thus, are maintained for the reasons of record.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

*Bm*

Brian Mruk  
June 14, 2005

*Brian P. Mruk*  
Brian P. Mruk  
Primary Examiner  
Tech Center 1700